



*"To enrich lives through effective and caring service"*



**Santos H. Kreimann**  
Director

**Kerry Silverstrom**  
Chief Deputy

## ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

#23 JULY 10, 2010

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

July 06, 2010

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL OF REVISED ANCHORAGE REPLACEMENT SCHEDULE  
AMENDMENT NO. 6 TO SECOND AMENDED AND RESTATED LEASE NO. 55624  
MARINA CITY CLUB (Parcel 125R at 4333 Admiralty)  
MARINA DEL REY  
(4th DISTRICT - 4 VOTES)**

### **SUBJECT**

Request approval of a lease amendment for Parcel 125R (Marina City Club) that extends anchorage replacement deadlines to dates subsequent to California Coastal Commission approval of a master waterside Coastal Development Permit the County intends to secure.

### **IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Lease Amendment No. 6 to the Second Amended and Restated Lease No. 55624 is categorically exempt under the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Amendment No. 6 to the Second Amended and Restated Lease No. 55624, granting to Essex Marina City Club, L.P. an extension of time to secure regulatory approvals and complete construction of the Parcel 125R (Marina City Club) docks to dates eight and 30 months, respectively, after the County's master waterside Coastal Development Permit is approved by the California Coastal Commission, with up to six additional months as an outside completion date to complete construction should an event of force majeure prevent the lessee from completing the work on schedule.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On January 6, 2004, your Board consented to the assignment of Parcel 125R (Marina City Club) to Essex Marina City Club, L.P. (Lessee), a California limited partnership. As part of its acceptance of the assignment of the lease, Essex agreed to replace all of the docks by December 31, 2008. On December 16, 2008, your Board granted a four-year extension to replace the Parcel 125R docks to December 31, 2012, along with the requirement that Lessee pay the County an annual extension fee of \$110,000, commencing December 16, 2008, until completion of the docks. As a condition of the extension, Lessee agreed to obtain all necessary regulatory approvals and permits to replace the docks no later than June 30, 2010 or to pay the County \$250,000 as compensation for said failure by July 15, 2010. Further, Lessee agreed to complete construction of the docks by December 31, 2012 or pay the County \$100 per month for each slip that has not been completed until all of the dock construction is complete. The outside completion date for the docks was set for June 30, 2013.

Consistent with the California Coastal Commission's desire to have the various redevelopment projects requiring Local Coastal Program (LCP) amendments submitted as one LCP amendment rather than project by project, the Department of Beaches and Harbors (Department) is preparing to apply for a master waterside Coastal Development Permit for anchorage replacements on various parcels in Marina del Rey, in which the Parcel 125R anchorage replacement will be included (the "Waterside CDP"). The Department has requested and Lessee has withdrawn its own Coastal Development Permit application for its individual anchorage replacement project. This will necessarily require a delay in Lessee securing the required entitlements and completing construction within the existing deadlines and, thus, they must be extended.

The attached Amendment No. 6 to the Second Amended and Restated Lease No. 55624 extends the dates to both obtain all permits and complete construction to eight months and 30 months, respectively, after the date the County has obtained approval for the Waterside CDP. In the event Lessee fails to obtain all necessary regulatory approval to commence construction within eight months following Waterside CDP approval, Lessee shall pay the County \$250,000 as compensation for said failure within 15 days of said date. If the Lessee is unable to complete construction within 30 months, Lessee shall pay the County \$100 per month for each slip that has not been completed until all of the dock construction is completed. The outside completion date for construction is extended for an additional six months beyond the 30 months to allow the Lessee to complete its work should an event of force majeure prevent it from completing the work as scheduled.

### **Implementation of Strategic Plan Goals**

The recommended action will facilitate County's effort to obtain just one Waterside CDP for all dock replacements and will also ensure the Lessee's completion of construction within a reasonable time frame after approval of the Waterside CDP is secured, both of which will result in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness", Strategy 1, "Fiscal Sustainability", as there will be more efficiency in securing Coastal Commission approval for all dock replacement through one Waterside CDP and the redeveloped docks will enhance the County's revenue.

### **FISCAL IMPACT/FINANCING**

Amendment No. 6 provides for continued annual extension payments of \$110,000 to the County during construction of the docks that otherwise could have been expected as increased revenue commencing in 2009 had construction of the new docks been completed within the initial deadline.

Operating Budget Impact

The \$110,000 extension payment budgeted in the Department's FY 2009-10 Final Adopted Budget has already been received, and an additional \$110,000 has been included in the Department's FY 2010-11 Proposed Budget. Subsequent \$110,000 extension payments will continue to be included in proposed budgets as one-time revenue until the dock construction is complete.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The term of the Lease, executed in October 1987, commenced retroactively on November 7, 1986 and expires on July 29, 2067.

The new docks shall be constructed in conformance with Marina del Rey dock design standards current as of the date of construction and shall be fully compliant with California Department of Boating and Waterways guidelines. In addition, the new docks will provide access as required by the Americans with Disabilities Act and include a pumpout station, if required by the California Coastal Commission, and a transient/water-taxi dock.

Amendment No. 6 has been approved as to form by County Counsel. The Small Craft Harbor Commission will consider the recommendation to approve Amendment No. 6 at its meeting of June 9, 2010, and its action will be communicated to your Board prior to your Board's consideration of this matter.

### **ENVIRONMENTAL DOCUMENTATION**

Amendment No. 6 is categorically exempt under the provisions of the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

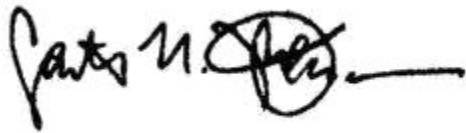
There will be no impact on current services from your Board's approval of this Amendment No. 6.

### **CONCLUSION**

Please have the Chair of the Board sign all three copies of Amendment No. 6 and have the Executive Officer of the Board return two executed copies, as well as a copy of the adopted Board letter, to the Department of Beaches and Harbors.

The Honorable Board of Supervisors  
7/6/2010  
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", followed by a horizontal line.

SANTOS H. KREIMANN  
Director

SHK:KS:GJ:PW:ks

Enclosures

c: Chief Executive Officer  
County Counsel  
Executive Officer, Board of Supervisors

AMENDMENT NO. 6 TO THE SECOND AMENDED AND RESTATED  
LEASE (IMPROVED PARCEL) NO. 55624  
PARCEL NO. 125R – MARINA DEL REY SMALL CRAFT HARBOR

THIS AMENDMENT NO. 6 TO THE SECOND AMENDED AND RESTATED LEASE  
(IMPROVED PARCEL) NO. 55624, PARCEL NO. 125R – MARINA DEL REY SMALL  
CRAFT HARBOR (this "Amendment") is dated as of JUNE 3, 2010 (the "Effective  
Date"),

BY AND BETWEEN

COUNTY OF LOS ANGELES,  
Hereinafter referred to as "County,"

AND

ESSEX MARINA CITY CLUB, L.P.,  
a California limited partnership, as successor in interest to  
Marina City Club, L.P., a California limited partnership  
(f/k/a J.H. Snyder Company), hereinafter referred to as  
"Lessee."

WITNESSETH:

WHEREAS, County and Marina City Club, L.P., a California limited partnership ("Original Lessee"), entered into that certain Second Amended and Restated Lease (Improved Parcel) dated October 27, 1987 and identified as Lease No. 55624 ("The Original Lease"), as amended by (i) that certain First Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R Marina del Rey dated November 4, 1988, (ii) that certain Second Amendment to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R – Marina del Rey dated August 1, 1992, (iii) that certain Amendment No. 3 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R – Marina del Rey Small Craft Harbor dated December 3, 2002, (iv) that certain Amendment No. 4 to the Second Amended and Restated Lease (Improved Parcel) No. 55624, Parcel 125R – Marina del Rey Small Craft Harbor dated June 22, 2004, and, (v) that certain Amendment No. 5 to the Second Amended and Restated lease (Improved Parcel) No. 55624, Parcel 125R – Marina del Rey Small Craft Harbor dated December 16, 2008 (the Original Lease, as so amended, is hereinafter referred to as the "Lease"); and

WHEREAS, pursuant to that certain Assignment of Lease dated as of December 11,

2003 and executed by Original Lessee, and that certain Acceptance of Assignment of Lease dated as of December 18, 2003 and executed by Lessee, Lessee acquired all of Original Lessee's right, title and interest in and to, and assumed Original Lessee's obligations under, the Lease effective as of January 21, 2004 (the foregoing Assignment of Lease and Acceptance of Assignment of Lease are collectively referred to herein as the "Assignment"); and

WHEREAS, pursuant to Amendment No. 5, Lessee is required to obtain all necessary governmental permits and approvals for the construction of the New Anchorage Facilities by not later than June 30, 2010; and

WHEREAS, County, in its sole discretion, has decided to submit an application to the California Coastal Commission for a master waterside coastal development permit for improvements on various parcels in Marina del Rey, including Parcel 125R (the "Waterside Permit"); and

WHEREAS, Lessee has withdrawn its permit application with the California Coastal Commission at County's request awaiting the conclusion of the Waterside Permit and therefore is not able to meet the June 30, 2010 deadline; and

WHEREAS, Lessee and County desire to enter into this Amendment to extend the Construction Completion Date (as defined hereinbelow), and other critical dates in conjunction therewith as set forth in Amendment No. 5.

NOW, THEREFORE, with reference to the foregoing recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Lessee hereby agree as follows:

1. Definitions. All initially-capitalized terms used but not defined in this Amendment have the meanings given such terms in the Lease.

2. Commencing as of the Effective Date of this Amendment, Sections 2.2, 2.3, and 3 of Amendment No. 5 shall be amended and restated in their entirety to read as follows:

"2.2 Design and Construction of New Anchorage Facilities. The New Anchorage Facilities shall constitute Improvements to be constructed by Lessee under Article 4 of the Lease, and Lessee shall comply with all terms and provisions of Article 4 of the Lease in

connection with the design and construction of the New Anchorage Facilities. Without limitation of the foregoing, the New Anchorage Facilities shall be designed and constructed in accordance with plans and specifications that are approved by the Department on behalf of County. Lessee shall prepare and submit to the Department all plans and specifications for the New Anchorage Facilities, and submit and process with applicable governmental authorities all applications for required governmental permits and approvals for the New Anchorage Facilities, in accordance with a schedule that is reasonably expected to effectuate the completion of the construction of the New Anchorage Facilities by not later than the date which is twenty-two (22) months after the commencement of construction, (the "Construction Completion Date"). Within thirty (30) days after the Waterside Permit has been approved by the California Coastal Commission, Lessee shall submit to the Department a proposed schedule for the design, permitting and construction of the New Anchorage Facilities, which schedule shall be subject to the Department's approval, which approval shall not be unreasonably withheld. Upon approval by the Department, Lessee shall comply with such design, permitting and construction schedule. In all events, Lessee shall commence construction on the New Anchorage Facilities no later than eight (8) months after the approval of the Waterside Permit. If lessee fails to obtain all necessary governmental permits and approvals for the construction of the New Anchorage Facilities by the date which is eight (8) months after the Waterside Permit has been approved by the California Coastal Commission (the "Required Permit Receipt Date"), then in addition to the Extension Payments and any Additional Extension payments, if applicable (as such terms are defined in Section 3 below), lessee shall pay to County the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "Permit Delay Fee") on or before the date fifteen (15) days after the Required Permit Receipt Date.

"2.3 Completion of New Anchorage Facilities. Lessee shall perform the New Anchorage Facilities construction on a phased basis in accordance with a phasing schedule approved by the Department, which approval shall not be unreasonably withheld. Such phasing schedule shall not result in more than thirty percent (30%) of the boat slips on the Premises being out of service at any one time. Lessee shall substantially complete the construction of the New Anchorage Facilities by not later than the Construction Completion Date. If Lessee has worked diligently to complete the design, permitting and construction of the New Anchorage Facilities by the Construction Completion Date, but despite such diligent efforts Lessee is unable to substantially complete the construction of the New Anchorage Facilities by the

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Construction Completion Date, then Lessee shall not be in default of the Lease for its failure to substantially complete the construction of the New Anchorage Facilities by the Construction Completion Date as long as Lessee substantially completes the construction of the New Anchorage Facilities by the date which is two (2) months after the Construction Completion Date (the "Outside Completion Date"). Notwithstanding the foregoing, if Lessee is delayed in the substantial completion of the construction of the New Anchorage Facilities by the Outside Completion Date due to an Anchorage Force Majeure Event (as defined below), then the Outside Completion Date shall be extended by the duration of the delay caused by such Anchorage Force Majeure Event, but in no event shall the Outside Completion Date be extended beyond the date which is six (6) months after the Construction Completion Date. If Lessee fails to substantially complete the construction of the New Anchorage Facilities by the Outside Completion Date (as such date may be extended pursuant to the immediately preceding sentence), then upon written notice by County to Lessee, such failure shall constitute an Event of Default by Lessee under Article 8 of the Lease, without any requirement for a cure or grace period, and County shall have the right to exercise all of its rights and remedies available under the Lease, at law or in equity as a result of such Event of Default. Notwithstanding any contrary provision of the Lease, the dates for Lessee's performance under this Section 2 and Section 3 below shall not be subject to extension for any reason, including without limitation, any force majeure delay or other excuse, except for (i) any extension of the Required Permit Receipt Date pursuant to the next to last sentence of Section 2.2 above, (ii) any extension of the Construction Completion Date for an Anchorage Force Majeure Event in accordance with this Section 2.3, or (iii) any extension of the Construction Completion Date set forth in Section 3 below for an Anchorage Force Majeure Event. For purposes of this Amendment, the "substantial completion" of the New Anchorage Facilities shall mean the completion of the New Anchorage Facilities, subject only to minor punch-list items that do not materially interfere with the use and occupancy of the New Anchorage Facilities by boaters, including without limitation, receipt by Lessee of a certificate of occupancy (whether temporary or permanent) or other governmental approval for all of the New Anchorage Facilities that permits the lawful use or occupancy thereof. Lessee shall diligently complete any remaining punch-list items as soon as reasonably possible (but in any event within thirty (30) days, except to the extent that a period longer than thirty (30) days is required due to the unavailability of parts or materials or other causes beyond the reasonable control of



Lessee).

"For purposes hereof, an Anchorage Force Majeure Event shall mean a delay in the completion of the New Anchorage Facilities due to fire, earthquake, flood, tornado, tsunami, civil disturbance, war, organized labor dispute, moratorium or other similar unforeseeable event beyond the control of Lessee that occurs after the date of this Amendment. In no event shall an Anchorage Force Majeure Event include any delay attributable to financial infeasibility or other financially related condition. Notwithstanding any contrary provision hereof, no delay attributable to an Anchorage Force Majeure Event shall be considered to have commenced until Lessee has provided County with written notice of the occurrence, condition or circumstance that constitutes such Anchorage Force Majeure Event; provided, however, that if Lessee provides written notice to County of the Anchorage Force Majeure Event within five (5) business days after the date that Lessee first becomes aware that the occurrence, condition or circumstance that constitutes the Anchorage Force Majeure Event has occurred or arisen, then the delay attributable to the Anchorage Force Majeure Event shall be considered to have commenced retroactive to the date that the Anchorage Force Majeure Event causing the delay first occurred or arose.

"3. Extension Payments. In consideration of the extension granted by County to Lessee under this Amendment with respect to the completion of the New Anchorage Facilities, Lessee shall pay to County an annual amount equal to One Hundred Ten Thousand Dollars (\$110,000.00) (each, an "Extension Payment") commencing on December 16, 2008 until the date of the substantial completion of the New Anchorage Facilities. Lessee shall continue to pay annual Extension Payments to County on each and every successive December 16th unless and until as of the due date for a particular Extension Payment the construction of the New Anchorage Facilities has been substantially completed. In addition to the Extension Payments, if the construction of the New Anchorage Facilities has not been substantially completed by the Construction Completion Date (as such date may be extended by an Anchorage Force Majeure Event), then Lessee shall thereafter pay to County an additional monthly sum (each, an "Additional Extension Payment") equal to One Hundred Dollars (\$100.00) per month for each boat slip of the New Anchorage Facilities that has not been substantially completed as of the first day of each calendar month thereafter (i.e., commencing with the first day of each calendar month following the Construction

Completion Date if the foregoing Construction Completion Date is not extended by an Anchorage Force Majeure Event) until all of the New Anchorage Facilities have been substantially completed. If applicable, the first Additional Extension Payment shall be paid by Lessee to County on or before the first day of the calendar month following the Construction Completion Date (or in the case of an Anchorage Force Majeure Event, the first day of the calendar month following the date to which the Construction Completion Date as set forth in this Section 3 is extended) and subsequent Additional Extension Payments shall continue to be paid by Lessee to County on or before the first day of each calendar month thereafter until the New Anchorage Facilities have been substantially completed. The Extension Payments and Additional Extension Payments described in this Section 3 and the Permit Delay Fee described in Section 2.2 above, if and to the extent payable hereunder, shall constitute additional rent payable by Lessee under the Lease. The Additional Extension Payments and Permit Delay Fee (if applicable) are not intended as a forfeiture or penalty within the meaning of Sections 3275 or 3369 of the California Civil Code, but are intended to constitute liquidated damages for Lessee's failure to substantially complete the New Anchorage Facilities by the date required in this Amendment, the parties acknowledging and agreeing that it is extremely impracticable and difficult to estimate the actual damage and harm (including rental losses) that County will suffer from further delays by Lessee in performing the New Anchorage Facilities work. The parties further expressly acknowledge, stipulate and agree that the Additional Extension Payments and Permit Delay Fee are reasonable taking into consideration all circumstances, including without limitation, Lessee's existing failure to perform the boat slip replacement work as previously agreed by Lessee under the Assignment and in consideration of the further extension being granted by County under this Amendment."

3. The Lease has not been modified, amended or supplemented except as set forth in this Amendment and, as amended by this Amendment, the Lease is and remains in full force and effect.

*(Signatures on following page)*

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chair of said Board and attested by the Executive

Officer thereof, and the Lessee, by its duly authorized representative, has executed the same.

Dated: July 6, 2010

COUNTY:

COUNTY OF LOS ANGELES

By:

Gloria Molina  
Chair, Board of Supervisors

ATTEST:

SACHI A. HAMAI,  
Executive Officer-Clerk of the  
Board of Supervisors

By:

[Signature]  
Deputy

APPROVED AS TO FORM:

ANDREA SHERIDAN  
County Counsel

By:

[Signature]  
Deputy



I hereby certify that pursuant to  
Section 25103 of the Government Code,  
delivery of this document has been made.

SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By:

[Signature]  
Deputy

55624 SUPPLEMENT 10

ESSEX MARINA CITY CLUB, L.P.,  
a California limited partnership

By: Essex MCC, LLC,  
a Delaware limited liability company,  
its general partner

By: Essex Portfolio, L.P.,  
a California limited partnership,  
its sole member

By: Essex Property Trust, Inc.,  
a Maryland corporation,  
its general partner

By:

[Signature]  
Erik Alexander,  
Senior Vice President

**ADOPTED**  
BOARD OF SUPERVISORS

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[Signature]  
SACHI A. HAMAI  
EXECUTIVE OFFICER